

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNS/W/18

15 September 1987

Special Distribution

Group of Negotiations on Services

Original: English

COMMUNICATION FROM JAPAN

The attached communication is circulated at the request of the delegation of Japan to the members of the Group of Negotiations on Services.

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## National Treatment and Trade in Service

### 1. Introduction

The fundamental objectives of the GATT are to raise standards of living, to ensure full employment and a growing volume of real income and effective demand, to develop the full use of the resource of the world, and to expand the production and exchange of goods. It is the desire of the GATT to contribute to these objectives by entering into arrangements directed to the substantial reduction of tariffs and other barriers to trade and to elimination of discriminatory treatment in international trade. (Preamble of the GATT)

National treatment is certainly one of the most fundamental and indispensable principles to achieve such objectives of the GATT. Even in the area of government procurement where national treatment of the General Agreement had not applied quite a long time, the Tokyo round Government Procurement Code filled the gap, and national treatment has gained further universality as a guiding principle of international trade and market.

Today we see a great number and different kinds of discriminatory measures operating to prevent the expansion of international trade in services. The principle of national treatment is therefore an essential instrument to expand service trade as it is in trade in goods.

Since the value of national treatment is premised upon the assurance of access to market, the market access element also needs to be addressed separately as an essential component of the framework agreement on services. This paper deals with relevant points for discussions only on national treatment element, and does not prejudge Japan's negotiating position.

## 2. National Treatment for Trade in Services

The GATT Article III provides national treatment for trade in goods, assuring "treatment no less favorable than that accorded to like products of national origin." The NT for trade in services needs to be defined in line with the characteristics of trade in services.

The following types of international transaction in services are identified generally (MDF/W/59):

- a. Sale of the services transported across borders,
- b. Delivery of service by a seller staying temporarily in an importing country,
- c. Service transactions through the establishment of enterprises, investment in a service enterprise already established, or commercial link with an established service enterprise.

Given these transactions in trade in services, the national treatment for trade in services could be defined, for example, that imported services, foreign service enterprises or sellers delivering the service, and agents

thereof shall be accorded treatment no less favorable than that accorded to like domestic services, domestic service enterprises or sellers. The definition depends much on the types of service transactions to be covered, and calls for more elaborated examination. Various types of transactions in international service trade exist in today's world. So, we have to examine the coverage of those transactions subject to NT obligation, and work out the specific definition of NT for trade in services. The GATT Article III (national treatment), Article II of Agreement on Government Procurement (national treatment and non-discrimination) and those relevant provisions of existing bilateral agreements would be of help to us as reference provisions.

### 3. GATT Article III and the Coverage

National treatment under GATT Article III covers "internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products ..... ." Given the definition suggested in the foregoing on national treatment for trade in services, imported services, foreign service enterprises or sellers, and agents thereof would be subject to the discipline. Could the coverage of the present GATT Article III be sufficient to accommodate such a definition of NT for trade in services?

GATT Article III only envisages laws, regulations and requirement affecting transactions for products, not services or providers of services. Could we agree that NT for trade in services include those laws, regulations and requirement pertaining to enterprises/persons providing services and their operations including, inter alia, establishment of enterprises and business activities? If so, to what extent?

4. Consideration for application (Grand Father clause)

Article III falls in Part II of GATT, which has been applied by contracting parties "provisionally" and "to the fullest extent not inconsistent with their legislation" either under the Protocol of Provisional Application or Protocol of Accession to GATT. It is a matter of consideration whether the same status of application should be accorded to NT (and other principles) for trade in services. Even if it should be so, however, the laws and regulations inconsistent with national treatment obligation should not be left intact.

A mechanism would be necessary to phase them out through negotiations. One method would be to build a mechanism for periodical negotiations to review such inconsistent laws/regulations within the framework agreement, together with the obligation to notify such laws and regulations.

5. Exceptions

To the extent that NT under GATT is applied to all traded goods (products), NT for trade in services should be also applied in principle to all traded services agreed to be subject to the disciplines of the framework agreement.

The present GATT allows for exceptions specific to NT and those exceptions of more general nature. Are they also applicable to trade in services? The points for discussions include the followings.

a. Subsidies

NT provisions of GATT do not prevent the payment of subsidies exclusively to domestic producers (Article III. 8 (b)), while Article XVI provides for the requirement of notification and of discussing the possibility of limiting the subsidization. Detailed arrangements have been also established in the Subsidies and Countervailing Measures Code. The possibility of elaborated rule-making for subsidies on trade in services should also be looked into, taking into account the development of GNG side of negotiations on subsidies. Those disciplines on subsidies affecting trade in services may well include the duty of notification and consultation as we see in case of goods.

b. Government procurement

Article III. 8 (a) explicitly provides for exception in case of government procurement, but the Agreement on Government Procurement has successfully filled the loop hole in this respect. The Government Procurement Committee has also undertaken the work on the question of including service contracts in the Agreement.

It seems appropriate therefore for the Committee to continue their negotiations on government procurement including those for services, especially in view of specific nature of government procurement and procedural similarity between service and good contracts.

c. State Trading Enterprises

Article XVII of GATT admits the establishment or maintenance of a State enterprise or granting to an enterprise of exclusive or special privileges. Should an enterprise with exclusive privileges be admitted in some specific service sector, it would constitute an exception to national treatment for service trade. But should they be all admitted in our service agreement? We certainly need to examine the appropriateness of admitting such an exception to a State enterprise fulfilling legitimate national policy objectives involving those of high public

interest. But even in such a case, adverse impact on service trade should be minimized by putting disciplinary restraints on the behavior of such privileged enterprises, including notification and other obligations as set forth in GATT Article XVII.

d. General and Security Exceptions

General exceptions under Article XX as well as security exceptions under Article XXI seem to be basically applicable to trade in services.